FOR MYSORE STATE

Secs. II-27—100,000—21-5-53.

Home (1948) Department.

HS SERIES. P.5(E)

G.O. No. 2609

Dated 8.7.48

[Despatch Abstract.]

Service of Legal processes issued by Indian courts against persons residing in Pakistan - Procedure till reciprocal arrangements are made - Letter from the Govt of India communicated.

GOVERNMENT OF MADRAS.

Abstract.

SERVICE OF LEGAL PROCESSES ISSUED by Indian Courts against persons residing in Pakistan - Procedure till reciprocal arrangements are made - Letter from the Government of India - Communicated.

Home Department.

G.O. Ms. No. 2609. Dated 8th July 1948.
Read the following:-

From the Government of India, Ministry of External Affairs and Commonwealth Relations No.F.31-4-48 PAK.II dated 21st June 1948.

** ** **

I am directed to forward copy of letter No.S-42/IHC/48/1-322 dated the 19th May 1948, from the Secretary to the High Commissioner for India in Pakistan, Karachi, on the subject mentioned above. The question of making reciprocal arrangement between the two Governments for the services of processes in their territories is under consideration. Until an agreement is reached in the matter the Courts in the Provinces of Madras etc., may be advised to take action as suggested in the last paragraph of the enclosed letter.

O.C. NAMBIAR,
Assistant Secretary.

Copy of letter No.S-42-IHC/48-1-322, dated the 19th May, 1948 from the Secretary to the High Commissioner for India in Pakistan, to the Secretary to the Government of India, Ministry of External Affairs and Commonwealth Relations, New Delhi.

** ** **

Sub: Service of legal processes issued by Indian Courts against persons residing in Pakistan.

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I have the honour to say that this office is daily receiving summonses and other legal processes issued by Civil and Criminal Courts in India for service against persons residing in Pakistan. In the beginning such processes were being sent by this office to the Government of Pakistan for service but the Government of Pakistan returned them unserved with the remarks that no arrangement existed between the Governments of India and Pakistan for service of legal processes of their respective courts through their High Commissioners. This Office, therefore, returned the processes to the issuing courts for service on the parties direct by post.

It is now observed that some courts in India instead of sending processes to parties direct by post send them for service to the Government of Pakistan direct. Such processes are also

p.t.o.

returned by Pakistan Government to this Office with similar remarks.

To avoid unnecessary expense in ssnding processes to this office or to the Government of Pakistan and their eventual return to the issuing courts, I would suggest that the Provincial Governments may be advised to issue circulars for the guidance of their respective courts, that until arrangement has been reached between the two Dominion Governments with regard to the service of legal processes, they may send the processes to the parties direct on their known addresses by post.

** ** **

O R D E R:

Communicated to all District and Sessions Judges and the Registrar, High Court, Madras.

(Sd) P. M. Nayak, Dy Sy. to Govt.

/By order of His Excellency the Governor/

To the Registrar, High Court, Madras.
To all District and Sessions Judges.

/True Copy/

SUPERINTENDENT,
Madras Record Office,
-6-1953.

ss/1.6.

GOVERNMENT OF MADRAS.

Abstract.

Service of legal processes issued by Indian Courts against persons residing in Pakistan.

Home Department.

G.O. Ms. No. 2609. Dated 8th July 19

Read the following:-

Copy of letter No.F. 31-4/48-PAK(II) dated 20th September 1948 from the Deputy Secretary to the Government of India, Ministry of External Affairs and Commonwealth Relations, New Delhi, to all Provincial Governments.

I am directed to refer to your letter No. 4024J dated the 11th August 1948, on the subject mentioned above and to say that the instructions issued under this Ministry's letter No.F.31-4/48 Pak.II, dated the 21st June, 1948, should be considered as supplementary to and not in supersession of those previously issued on the subject. In the absence of any provision in the Code of Criminal Procedure authorising service of summonses etc., by post, Code cannot be sent by post for service on the persons concerned whether they are in India or in Pakistan.

Summonses etc issued by Criminal Courts under that

** ** **

Copy of letter No. 4024J, dated the 11th August 1948, from Secretary to the Government of West Bengal, Judicial Department, Calcutta, to the Secretary to the Government of India, Ministry of External Affairs and Commonwealth Relations, New Delhi.

* * *

Sub: Service of legal processess issued by Indian Courts against persons residing in Pakistan.

** **

I am directed to refer to the correspondence ending with your letter No.F.31-4/48-Pak.II, dated the 21st June 1948, on the subject noted above and to forward herewith a copy of letter No. 2424, dated the 16th July, 1948, from the Chief Presidency Magistrate, Calcutta, seeking clarification on the subject. This Government are inclined to presume that the Government of India intend laying down that the processes which are not covered by the previous instructions of the Government of India as interpreted by the Chief Presidency Magistrate, Calcutta, should be sent by post. I am now to request that this presumption may be confirmed or corrected at an early date as otherwise there may be more complications in future.

* *

Copy of letter No.2424, dated the 16th July, 1948

p.t.o.

from Shri N. Ray Chaudhury, ICS. Chief Presidency Magistrate, Calcutta, to the Secretary to the Government of West Bengal, Judicial Department.

* * *

Sub: Service of legal processes issued by Indian Courts against persons residing in Pakistan.

Ref: Your Memo No. 3263 (77) J, dated 30th June 1948 incorporation therein letter No.S.42/IHC/48/1-332 dated 19th May 1948, from Secretary to the High Commissioner for India in Pakistan and letter No. F.31-4/48-PAK.II, dated 21-6-48 from Assistant Secretary, Government of India, Ministry of External Affairs and Commonwealth Relations.

* * *

I have the honour to state that the advice given in the letters under reference on the above subject, in so far as Criminal Courts are concerned, vis-a-vis the procedure already laid down by Government of India requires clarification, and I would refer you to the previous procedure as analysed below.

2. Processes issued by a Criminal Court in India include Summons on or warrants against witnesses, summonses on accused persons, Warrants of Arrest, Proclamation and Attachment, Notices as provided under certain sections of the Criminal Procedure Code, however do not come under the category of processes. Issue of Proclamation and Attachment is the step subsequent to and consequent upon the failure of execution of a Warrant of Arrest. So far as persons in Pakistan are concerned, the question of issue of proclamation and attachment does not arise at all.

3. Issue of Warrants of arrest against accused persons in cases instituted subsequent to the 15th August 1947 on extraditable offences is regulated by the Extradition procedure laid down in Government of India, Ministry of External Affairs and Commonwealth Relations, No.F.23-1-/47-OS.V(PAK) dated 10-3-48 (as embodied with your No.1515 (60)J, dated 23-3-48).

4. Necessity of issue of summonses on witnesses (or warrants for that matter) has been obviated by the adoption of the procedure of examination on commission as laid down in Government of India, Ministry of External Affairs and Commonwealth Relations, No.D.849/48 PAK, to your address and their No.35544/47-OS.V. dated 11-12-47 to Government of Pakistan (as embodied with your No.950(78)J, dated 22-2-48).

5. Issue of summonses on accused persons or warrants against them (as also summonses on and warrants against witnesses) in cases pending before a Court in India immediately before the 15th August, 1947 appears to be regulated by Government of India, Ministry of Home Affairs No.79/6/47-Public (B) dated 13-1-48 (as embodied with your No.1723(76)J, dated 12-4-48).

Now only the question of issue of summonses on accused persons residing in Pakistan in cases instituted after 15-8-47 stood unattended to.

This question appears to be purely academic, for in all cases warrants can be issued instead of summonses. It is not, therefore, understood how the question of sending processes by post to individuals residing in Pakistan arises. I may be enlightened on this point.

/True Copy/

GOVERNMENT OF MADRAS.
Home Department
Memorandum No. 85273 E/48-1, dated 22nd October 1948.

Service of legal processes issued by Indian Courts against persons residing in Pakistan - Procedure till reciprocal arrangements are made.

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Ref: From the Government of India, Ministry of External Affairs and Commonwealth Relations No.F.31-4/48-Pak (II) dated 20th September 1948.

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Communicated to all District and Sessions Judges and the Registrar, High Court, Madras in continuation of G.O. Ms. No. 2609, Home, dated 8th July 1948.

P.M. Nayak,
Deputy Secretary to Government.

To the Registrar, High Court, Madras. } with enclosure
" all District and Sessions Judges }

/True Copy/

SUPERINTENDENT?
Madras Record Office,
-6-1953.

ss/1.6.

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